

on a *building* for work or materials, may come into a court of law or equity, for his share of the proceeds of a sale made under its authority, no such right is given, when such proceeds arise from the sale of machinery.

Upon the whole, I am of opinion, that as against the lien of the vendor, and the mortgage, these parties cannot be allowed to prevail in this court upon these proceeds of sale.

[An appeal was taken from this order but is not yet decided.]

JONES AND WHITE VS. LLOYD BROWN ET AL.	}	DECEMBER TERM, 1847.
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[HUSBAND AND WIFE—MARRIAGE SETTLEMENT.]

By a marriage settlement the property of the wife was conveyed to trustees, for the benefit of the wife, *during coverture*, free from the control, and not liable to the debts of her husband, with power to the wife to dispose of the same, either by last will and testament, in writing, or by any other writing signed by her hand in presence of two witnesses. The wife died without making any disposition whatever of the property. It was HELD—

That the contract did nothing more than suspend the marital rights of the husband during the life of the wife; and, upon her death, the property remained precisely in the same condition it would have been in if no such power of appointment had been created; and, consequently, the rights of the husband revived upon her death.

When it is intended in a marriage settlement to exclude the rights of the husband to the personal property of the wife, in the event of his surviving her, and in default of her appointment, an *express provision* to that effect should be inserted in the deed.

When the settlement makes no disposition of the property in the event of the wife's death, and provides only for her dominion over it during coverture, the right of the husband, as survivor, is a fixed and stable right, over which the court has no control, and of which he cannot be divested.

[In the month of November, 1841, a marriage being at that time in contemplation, between Drusilla Elliott and Lloyd Brown, the latter, for the purpose of securing to the former the